IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
	:	CRIMINAL NO. 03-216
v.	:	
	:	
DUJUAN LEWIS	:	
LAMAR EDGE	:	

SURRICK, J. **MAY 13, 2005**

MEMORANDUM & ORDER

Presently before the Court are Defendants Dujuan Lewis ("Lewis") and Lamar Edge's ("Edge") Motion To Suppress Physical Evidence And Identification (Doc. Nos. 36, 64)[1] and the Government's Response (Doc. Nos. 50, 68). For the following reasons, Defendants' Motion will be denied.

I. FINDINGS OF FACT

On November 11, 2002, Officer Duffy of the Upper Darby Township Police Department ("UDPD") was dispatched to the Bishop Hill Apartments in Upper Darby to investigate a noise complaint of loud music in Apartment J-19. (N.T. 10/29/04 at 6.) This apartment had been the subject of police surveillance for three months for drug activity. (N.T. 11/5/04 at 8, 23.) The security officer of the apartment complex, Lane Murphy, had noticed unusual activity at Apartment J-19 for two months and had reported the activity to the Upper Darby Special Service Unit. (N.T. 10/29/04 at 56.) Murphy noticed that "[a]ny car that pulled up to the building, they

[1]We granted Defendant Dujuan Lewis's Motion to Join in Suppression Motion Filed By Co-Defendant Lamar Edge (Doc. No. 55) on November 5, 2004. (Doc. No. 62.)

would back their car into the fence and the persons or whoever were in the car would get out of the car, hoodies pulled over their heads and go into the building." (*Id*.) The Upper Darby Special Service Unit also independently monitored the apartment. (*Id.* at 57.)

On November 11th, as Officer Duffy approached Apartment J-19, he heard loud music. (*Id.* at 8.) When Officer Duffy knocked on the door, a woman with a small child opened the door. (*Id*. at 8-9.) When Officer Duffy asked her to lower the music, the woman said that she would turn it off. (*Id*.) Officer Duffy noticed that bath towels were stuffed under the door. (*Id.* at 9.)

While Officer Duffy was in J building, David Haley, a maintenance worker at the Bishop Hill Apartments, saw a man jump from the balcony of Apartment J-19. Apartment J-19 is a second floor apartment. (N.T. 11/05/04 at 87.) Haley also saw two men look out of the window of Apartment J-19 and then retreat into the apartment. (*Id*. at 91.) Haley reported these incidents to Murphy. (*Id.*) Murphy, in turn, called the UDPD and reported the incidents. (N.T. 10/29/04 at 54.) While Murphy was on the telephone with the police, he saw the two men, Defendants Edge and Lewis, rush out of J building, carrying two boxes and a red and white Modell's bag.[2] (*Id.* at 54-55.) Murphy saw Defendants Edge and Lewis put the boxes and the bag in the trunk of a blue Oldsmobile parked outside the building. (*Id.*) After they loaded the car, Lewis drove the car a short distance to the L Building and left it there. (*Id.* at 58.) A few minutes later, Officer Tobin arrived. (*Id*. at 59.) Murphy related his observations to Officer Tobin. (*Id.* at 113.) Officer Tobin parked his car in front of the blue car and examined the license plate. (*Id.* at 114.) While Officer Tobin was at the blue car for the registration information, he observed a black

[2]Mr. Murphy later identified Edge and Lewis in photo arrays.

male, later identified as Defendant Edge, walking towards him at a quick pace. (*Id*.) When Edge saw Officer Tobin, he suddenly stopped. (*Id.*) As Officer Tobin started to approach Edge, Edge fled. (*Id*. at 115, 173.) Officer Tobin ran after him. (*Id.* at 116.) As Officer Tobin pursued Edge, he told Edge to stop. (*Id.* at 145, 148.) Edge did not stop. When they reached the back of the building, Officer Tobin observed Defendant Lewis, another man, and a woman at the entrance to L building. (*Id.* at 118.) Edge, Lewis, and the other man jumped into a maroon Buick and drove away. (*Id*. at 118-19.) Officer Tobin ran to his car. As he pursued the three men he hollered to Murphy to stay with the blue Oldsmobile. (*Id*.) Tobin never lost sight of the Buick. (*Id.*) As the Buick fled at a high rate of speed it ignored traffic signals, and struck at least two other cars in the area. (*Id.* at 120-24.) The pursuit continued through the streets of Upper Darby. Ultimately, when the Buick turned onto Wynnebrook Avenue, all three males, including the driver, jumped out of the moving car and ran. (*Id*. at 124.) The car continued forward, jumped the curb, and struck a house. (*Id*.) Officer Tobin stopped his car and ran after the men. (*Id*.) He, and the other officers that he had contacted by police radio during the car chase, caught the three men (Lewis, Edge and the third individual), and took them into custody. They were then taken to the police station in Upper Darby. (*Id.* at 125.)

Officer Tobin was directed to return to the Bishop Hill Apartments to check on the safety of the female and the small child that Officer Duffy had originally seen in Apartment J-19. (*Id.* at 127.) When he returned to the apartment, he and other officers knocked on the door of J-19. (*Id*. at 128.) There was no response. The officers then secured a key from Murphy and entered the apartment. (*Id.*) The officers looked through the apartment for the female and child, but did not find them. (*Id.* at 129.) However, while in the apartment, they saw contraband (marijuana)

near the television set, in plain view. (*Id*.) Thereafter, the apartment was secured while the officers obtained a search warrant for the apartment. (Gov't Ex. 2.) When the officers executed the search warrant, they found two digital scales; various packets of a green leafy substance; large amounts of clear, unused packaging material commonly used to package drugs; $6000 in cash; a bag with seven white round pills; one box of nine millimeter handgun ammunition; a wallet and papers bearing the name Rashaun Yeiser; and other items. (*Id.*; N.T. 11/05/04 at 10-11.) The lessee of Apartment J-19 was a person by the name of Zykechia Beach. (Government Exhibit 1.)

The police called the K-9 unit for a dog trained in sniffing for controlled substances. When the K-9 dog sniffed the blue car, it reacted positively for controlled substances. (N.T. 11/05/04 at 11-12.) The officers then sought and obtained a search warrant for the blue car. When the search warrant was executed, the officers found contraband in the car. Specifically, the officers found a large ziploc bag containing green vegetable matter, 341 red glassine bags containing green vegetable matter, a glassine bag containing white chunky matter, 1300 plastic cubes containing green vegetable matter packaged in white cardboard boxes, a large quantity of clear plastic containers, 298 clear plastic containers containing green vegetable matter, one letter addressed to Rashaun Yeiser, assorted shopping bags, one Ruger P-89 Serial No. 30574896 with a magazine containing fifteen nine millimeter bullets, and one locked toolbox (found inside the Modell's bag). (*Id*. at 13-14; Gov't Ex. DL-3.) Subsequent lab results indicated that there were 1800 grams of marijuana and 98.3 grams of cocaine base recovered from the trunk. (Gov't Ex. 3.) From the time that Officer Tobin pulled in front of the blue Oldsmobile until the K-9 Unit arrived, the blue Oldsmobile remained parked at the building and no one attempted to enter or

move the vehicle.

In their Motion, Defendants seek to suppress the evidence seized from the apartment and the blue Oldsmobile, asserting that the searches of the apartment and the blue car were made in violation of the Fourth Amendment. (Doc. No. 36 at unnumbered 7.) Defendants also assert that the police conducted an unlawful stop and frisk of Edge. (*Id.*)

II. CONCLUSIONS OF LAW

A. THE SEARCH OF APARTMENT J-19

Exigent circumstances allow "a warrantless entry by criminal law enforcement officials . . . when there is a compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). The Supreme Court has held that among the exigent circumstances that excuse police compliance with the warrant requirement is the "[n]eed to protect or preserve life." *Mincey v. Arizona*, 437 U.S. 385, 392 (1978) (citation omitted). "[T]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Id.* "The right of the police to enter and investigate in an emergency . . . is inherent in the very nature of their duties as peace officers . . . ." *Good v. Dauphin County Soc. Servs.*, 891 F.2d 1087, 1093 (3d Cir. 1989) (citation omitted). "The need to protect or preserve life or avoid serious injury is justification for what would otherwise be illegal absent an exigency or emergency." *Id.* (citation omitted.).

Clearly, the entry of the police officers into Apartment J-19 was necessitated by exigent circumstances. The officers entered the apartment without a warrant in order to ensure the safety and well-being of a woman and toddler that had been observed in the apartment earlier. (N.T.

10/29/04 at 128.) Specifically, the police knew that a woman and child had been in the apartment. The bizarre behavior that resulted from Officer Duffy's response to the noise complaint gave the police more than adequate reason to be concerned about the well-being of the woman and child. The apartment had been under surveillance for drug activity for several months. When Officer Duffy went to the door of the apartment, he observed towels placed under the door. While Officer Duffy was at the apartment, someone jumped from the balcony of the apartment to the ground. The apartment is on the second floor. Shortly thereafter, Defendants Lewis and Edge were seen rushing out of J building and putting boxes and a bag in the trunk of a blue automobile. The car was then moved from its parking space at J building and parked at K building. When Officer Tobin came on the scene, he started to check the registration of the blue car. While he was doing this he saw Defendant Edge walking toward the vehicle. Upon seeing Officer Tobin, Edge turned and fled. As Officer Tobin pursued Edge, he saw Edge, Lewis, and another male jump into a Buick automobile and flee from the apartment complex. The Buick fled at a high rate of speed, failed to comply with traffic signals, and struck two other cars as it fled. Officer Tobin followed in his vehicle. Ultimately, everyone in the Buick exited the vehicle while it was still moving. The Buick jumped the curb and struck a building. As the three men fled, they were apprehended and taken into custody and transported to the police station. The officers then returned to apartment J-19 to make sure the woman and the child were unharmed. They only entered the apartment when their knock went unanswered. Upon entering the apartment, the woman and child were nowhere to be found. However, the police officers did see illegal drugs in plain view. A search warrant was obtained and the apartment was searched. We are satisfied that, under these circumstances, the search of Apartment J-19 was perfectly proper.

There was no constitutional violation.

We also note that these Defendants both lack standing to assert that their Fourth Amendment rights were violated.[3] In order to claim the protection of the Fourth Amendment, a defendant must demonstrate that "he personally ha[d] an expectation of privacy in the place searched, and that his expectation is reasonable. . . ." *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). "The Amendment protects persons against unreasonable searches of 'their persons [and] houses' and thus indicates that the Fourth Amendment is a personal right that must be invoked by an individual." *Id*. (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967) ("The Fourth Amendment protects people, not places.").) Moreover, the Supreme Court has observed that "the extent to which the Fourth Amendment protects people may depend upon where those people are. We have held that 'capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.'" *Id*. (quoting *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)). In addition, "the defendant must bear the burden of proving that his expectation of privacy was a reasonable one, and thus that a 'search' within the meaning of the Fourth Amendment even took place." *Florida v. Riley*, 488 U.S. 445, 455 (1989) (O'Connor, J. , concurring); *see also Jones v. United States*, 362 U.S. 257, 261 (1960) ("Ordinarily, then, it is entirely proper to require of one who seeks to challenge the legality of a search as the basis for

[3]The fact that Defendants are charged with crimes of possession does not entitle them to automatic standing to challenge the legality of the search. *See United States v. Salvucci*, 448 U.S. 83 (1980) ("Today we hold that defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their Fourth Amendment rights have been violated. The automatic standing rule of *Jones v. United States*, 362 U.S. 257 (1960) is therefore overruled.").

suppressing relevant evidence that he allege, and if the allegation be disputed, that he establish that he himself was the victim of an invasion of privacy.")). Fourth Amendment rights are "personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rackas,* 439 U.S. at 133-34.

In this case, Defendants have presented no evidence whatsoever of any connection to Apartment J-19, other than their presence on the day in question. It is impossible to determine based upon this record that Defendants were anything other than merely visitors at the apartment for some brief period of time. We do not even know if they were there with the consent of the lessee. Mere presence is not sufficient to create a reasonable expectation of privacy. *See Carter*, 525 U.S. at 93 (holding that while an overnight guest may have a legitimate expectation of privacy in someone else's home, one who is merely present with the consent of the householder may not) (citing *Minnesota v. Olson*, 495 U.S. 91 (1990); *Jones v. United States*, 362 U.S. 257 (1960)).

B. THE SEARCH OF THE BLUE OLDSMOBILE

When Officer Tobin arrived at the apartment complex, he was advised by Murphy of what had transpired with regard to Apartment J-19 and the blue Oldsmobile. Officer Tobin then drove his car to the location near L building where the blue car was parked. Officer Tobin stopped his vehicle in front of the blue car, which had been backed into a parking space. He then began the process of checking the registration of the vehicle. While he was checking the registration, he saw Defendant Edge walking toward him at a fast pace. When Edge saw Officer Tobin, he stopped and then turned and ran from the area. Officer Tobin pursued Edge, who jumped into a vehicle with two other individuals and left the complex at a high rate of speed,

striking two vehicles on the way. Officer Tobin got into his vehicle and followed them with his lights and siren on. At Officer Tobin's discretion, Murphy pulled his vehicle in front of the blue car. As discussed above, the three men were apprehended after they jumped from the moving car and they were taken to the Upper Darby police station.

Thereafter, the K-9 Unit was contacted and a drug sniffing dog was brought to the apartment complex. Upon sniffing the exterior of the blue car, the dog alerted positive for controlled substances. A search warrant was obtained, the blue car was moved to the Upper Darby police station, and a search revealed contraband in the vehicle.

Officer Tobin's blocking of the blue Oldsmobile was nothing more than a lawful *Terry* stop. Officer Tobin had sufficient reasonable suspicion to block the movement of the vehicle and to conduct an investigation. *See Terry v. Ohio*, 392 U.S. 1 (1968) (holding that when a "police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous" he may stop the defendants); *see also United States v. Robertson*, 305 F.3d 164, 166 (3d Cir. 2002) ("To determine whether reasonable suspicion exists, we must consider the totality of the circumstances – the whole picture." (quoting *United States v. Sokolow*, 490 U.S. 1, 8 (1989))).

The length of time that a person may be detained or an object may be seized for investigative purposes after a *Terry* stop depends on the circumstances. *United States v. Frost*, 999 F.2d 737 (3d Cir. 1993). The Supreme Court has refused to adopt an outside time limitation for a permissible *Terry* stop. In *United States v. Place*, 462 U.S. 696 (1983), that Court stated:

We understand the desirability of providing law enforcement authorities with a

> clear rule to guide their conduct. Nevertheless, we question the wisdom of a rigid time limitation. Such a limit would undermine the equally important need to allow authorities to graduate their responses to the demands of any particular situation.

Id. at 710 n.10.

In the instant case, Officer Tobin arrived at the subject apartment complex shortly after 4:00 p.m. After speaking with the security officer at the complex, he pulled his vehicle in front of the blue Oldsmobile. When Officer Tobin left the complex in pursuit of Defendants, he told Murphy to block the vehicle. The K-9 unit arrived at the complex at approximately 5:45 p.m. During the time between Officer Tobin's arrival and the arrival of the K-9 unit, the blue Oldsmobile was unattended and no one attempted to enter or move the vehicle. During this same period of time, Officer Tobin and other Upper Darby police officers were pursuing Defendants, apprehending them, and taking them to the Upper Darby police station. Clearly, the blocking of the vehicle under these circumstances was minimally intrusive. Just as clearly, there is no indication that the police officers acted with a lack of diligence in getting the K-9 unit to the scene. Obviously, the Defendants were keeping the Upper Darby Police Department very busy during this period of time. Under the circumstances, the blocking of the blue Oldsmobile until the K-9 unit arrived did not constitute a violation of anyone's rights.[4]

Finally, when the K-9 dog alerted positive for the presence of controlled substances in the

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[4]We note that neither Lewis nor Edge owned the car. It may be arguable that Lewis had an expectation of privacy in the vehicle since he drove it from building J to building L. However, Edge had no expectation of privacy in the vehicle. In *Rakas*, the Supreme Court found that passengers in a car had no "legitimate expectation of privacy in the glove compartment or area under the seat of the car . . . " of the vehicle by virtue of their status as passengers. *Rakas*, 439 U.S. at 148-49; *see also United States v. Baker*, 221 F.3d 438, 441-42 (3d Cir. 2000) ("It is clear that a passenger in a car that he neither owns nor leases typically has no standing to challenge a search of the car.").

blue Oldsmobile, the officers had probable cause to obtain a search warrant for the vehicle. *See United States v. Caraballo*, 104 Fed. Appx. 820, 822 (3d Cir. 2004) ("A dog sniff is not a search and no probable cause or reasonable suspicion is necessary to conduct it . . . . Further, the seizure of drugs was constitutional, because the warrant obtained after the dog sniff was supported by probable cause, including the positive result of the dog sniff."). The Defendants' arguments with regard to the search of the blue Oldsmobile are completely devoid of merit.

C. THE ARREST AND IDENTIFICATION OF DEFENDANTS

The officers' seizure of both Defendants at the end of the high speed chase was obviously proper. "Headlong flight – wherever it occurs – is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). In this case, the police knew that a man had jumped out of a second floor window of Apartment J-19 when the police were making a routine call at the apartment. Shortly thereafter, Defendants hurriedly loaded items into the trunk of the blue Oldsmobile outside of J building and then inexplicably moved the car to another location in the same complex. Defendant Edge fled from Officer Tobin upon encountering him, he met up with Defendant Lewis and another man, and all three fled the apartment complex at a high rate of speed causing accidents and ignoring traffic laws. All three men jumped out of the moving car and fled on foot as the car proceeded to crash into a house. The police officers were perfectly justified in apprehending Defendants and removing them to the Upper Darby police station. Shortly thereafter, the police determined through the drug sniffing dogs that there were controlled substances in the blue Oldsmobile. They also determined that there were controlled substances in plain view in Apartment J–19. The suggestion that the arrest of these Defendants was improper is

ludicrous.

With regard to the photo identification of Defendants at the Upper Darby Police Station, Officer Pecko testified that Murphy positively identified both Defendants after he had been shown two photo arrays. (N.T. 11/5/04 at 61-62.) There was nothing improper about the manner in which the photo identification was conducted. Moreover, there is nothing to suggest that the photo array was unduly suggestive. *See United States v. Lawrence*, 349 F.3d 109, 115 (3d Cir. 2003) (stating that "[a] due process violation can result when an identification procedure is so suggestive that it undermines the reliability of the resulting identification"). "The defendant has the initial burden of demonstrating that the confrontation procedure was impermissibly suggestive." *Reese v. Fulcomer*, 946 F.2d 247, 259 (3d Cir. 1991). Defendants have demonstrated nothing in this regard.

For the foregoing reasons, we will deny Defendants' Motion to Suppress.

An appropriate Order follows.

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UNITED STATES OF AMERICA	:	
	:	
	:	CRIMINAL NO. 03-216
V.	:	
	:	
DUJUAN LEWIS	:	
LAMAR EDGE	:	

ORDER

AND NOW, this 13th day of May, 2005, upon consideration of Defendants Dujuan Lewis and Lamar Edge's Motion to Suppress Physical Evidence and Identification (Doc. Nos. 36, 64, 03-Crim-216) and the Government's responses thereto, it is ORDERED that Defendants' Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

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R. Barclay Surrick, Judge